

VZCZCXRO7353  
PP RUEHFK RUEHGH RUEHKS  
DE RUEHKO #1181/01 0750943  
ZNY CCCCC ZZH  
P 160943Z MAR 07  
FM AMEMBASSY TOKYO  
TO RUEHC/SECSTATE WASHDC PRIORITY 1762  
INFO RUEHBJ/AMEMBASSY BEIJING 6192  
RUEHFR/AMEMBASSY PARIS 5356  
RUEHUL/AMEMBASSY SEOUL 2272  
RUEHFK/AMCONSUL FUKUOKA 0266  
RUEHGZ/AMCONSUL GUANGZHOU 1296  
RUEHHK/AMCONSUL HONG KONG 6199  
RUEHOK/AMCONSUL OSAKA KOBE 3777  
RUEHKS/AMCONSUL SAPPORO 1229  
RUEHGH/AMCONSUL SHANGHAI 0127  
RUEHSH/AMCONSUL SHENYANG 0457  
RUEHBS/USEU BRUSSELS  
RUEHGV/USMISSION GENEVA 3034  
RUEHIN/AIT TAIPEI 6346

C O N F I D E N T I A L SECTION 01 OF 04 TOKYO 001181

SIPDIS

SIPDIS

STATE PASS USTR FOR AUSTRS STRATFORD AND CUTLER  
USTR ALSO FOR JAPAN - BEEMAN, MEYERS; CHINA - WINTER,  
MCCARTIN  
GENEVA ALSO FOR USTR  
PARIS FOR USOECD

E.O. 12958: DECL: 03/16/2027

TAGS: [ECON](#) [ETRD](#) [WTRO](#) [PGOV](#) [JA](#) [CH](#)

SUBJECT: JAPAN FOREIGN MINISTRY STILL SQUEAMISH ABOUT WTO  
CHINA CASES

Classified By: Amb. J. Thomas Schieffer. Reason: 1.4 (B, D)

11. (C) Summary: Japan remains hesitant to join U.S.-initiated dispute settlement cases against China in the World Trade Organization (WTO) largely over concerns about possible Chinese retaliation against Japanese companies that have invested in China, according to the director-general for economic issues of Japan's Ministry of Foreign Affairs (MOFA). The Japanese suggested more contacts between Japanese and U.S. firms in China as a way to identify common interests that might result in joint action in the WTO. Domestic political factors will probably sustain Japan's reluctance to cooperate more actively with the United States on China-related issues in the WTO in the near term. End summary.

Japan Disappointed with Chinese Behavior in WTO  
-----

12. (SBU) Leading off a March 8 dinner discussion with Assistant U.S. Trade Representative for China Affairs Timothy Stratford, MOFA Economic Affairs Bureau Director General Yoichi Otabe noted that China's interest in multilateral and regional forums had expanded rapidly in recent years. Japan, he indicated, had hoped, in particular, that China would play a constructive role in the WTO following its accession in 2001 and not simply seek to lead the bloc of developing countries in the organization. The Chinese, however, had not worked to convince developing countries -- most importantly large states like India -- in the non-agricultural market access (NAMA) negotiations to lower their tariff rates. China Economic Office Director Morio Matsumoto added that China had looked to expand its influence regionally as well, especially with ASEAN.

13. (SBU) Stratford replied that, in his view, China

had not set itself up as a champion of the developing countries as it had much to gain from a successful resolution to the NAMA negotiations. It had, however, stayed silent to avoid alienating the developing countries in the WTO. The Chinese, consequently, tended to play a "double game" with respect to its relations with the poorer WTO members.

14. (C) Stratford told Otabe that frustration in Washington toward Japan's reluctance to cooperate with the United States on China and other issues had increased substantially. With respect to China, he outlined how the U.S. "two track" strategy of intensified dialogue combined with a willingness to bring cases to the WTO dispute settlement once dialogue had been exhausted had begun to yield results. Most importantly, the Chinese had shown signs of acceptance of WTO litigation as a normal part of participation in the international trading system and not as a fundamentally hostile act.

15. (SBU) Otabe acknowledged that, in the past under the GATT, Japan, too had not been accustomed to dealing with dispute settlement procedures, but, following instances in which Japan had both won and lost cases without serious political or economic repercussions, it had become more comfortable with the system. He added that the dispute settlement mechanisms of the WTO had been strengthened so that they now functioned better than before and noted that, overall, it was better to take a particular problem to the WTO in order to gain resolution, at least after an adequate period of time, than to continue to try to resolve the issue bilaterally.

TOKYO 00001181 002 OF 004

#### Probing of U.S. Motivations, Obstacles on WTO Cases

-----

16. (SBU) Otabe asked whether the large expansion of U.S. business interests in China had helped to ameliorate trade frictions. Stratford replied that the views of the U.S. business community, particularly toward WTO possible disputes, was evolving and fragmented. Different industries have different interests. Some were also more vulnerable to possible Chinese retaliation than others. That was one reason, Stratford noted, that the auto parts case in which the United States was participating had been submitted not just as a U.S. complaint but as a joint complaint by the United States, the European Union, and Canada. In addition, the case focused on systemic issues related to Chinese local content requirements and did not refer to any particular company so as to keep the Chinese from punishing any individual firm for complaining about the Chinese regulations.

17. (SBU) Otabe pressed Stratford as to whether U.S. firms that already had an established business presence in China might ask USTR not to bring a particular case in order to maintain special privileges they might have gained from the Chinese. Stratford stressed that if an issue was a clear WTO violation and some U.S. companies complained about it, USTR would be compelled to take action even though certain other U.S. firms might not benefit from that action. USTR must take the position that represents the broadest U.S. interest, Stratford explained.

#### IPR Case: Ongoing Concerns over Chinese Retaliation

-----

18. (SBU) According to Otabe, Japan and the United States had different approaches on these issues. For example, although Otabe himself -- as a former

negotiator on the TRIPS agreement -- would like to see Japan take a tougher line in the WTO on Chinese IPR violations, Japanese industry strongly favored an approach based on discussion and engagement with the Chinese, without recourse to WTO litigation. Stratford replied that the Japanese approach might have yielded some progress but that the problem of piracy had also increased. He questioned what the downside would be for Japan in joining an IPR complaint against China.

¶9. (SBU) Matsumoto indicated that Japan might join an IPR case as a full complainant if it could be convinced that winning the case would bring concrete improvements. He stressed, however, that because Japan investment in China is concentrated in manufacturing -- where protection of brand names was the most important IPR element -- it would be difficult for the Japanese to produce sufficient evidence of damage in order to win the case. In addition, Japanese firms remained worried about the possibility of Chinese retaliation should Japan join the case. Stratford rebutted Matsumoto by noting that the case being proposed by the United States would not require that kind of evidence as it was based solely on deficiencies in Chinese law. Matsumoto also acknowledged that the Japanese bureaucracy was under pressure from certain (unnamed) politicians to avoid taking steps that might provoke the Chinese. Stratford emphasized that the IPR case conceived by the United States would act as a crucial first step to strengthen Chinese criminal enforcement actions against IPR violations.

¶10. (SBU) Otabe, drawing further on his experience as

TOKYO 00001181 003 OF 004

a negotiator at the WTO, observed that the language in the TRIPS agreement is vague in many areas and much was left out in the final agreement, such as provisions on the export of counterfeit goods. He indicated his approval of U.S. willingness to address IPR issues like those with China through the WTO rather than by using bilateral instruments like "Special 301" but responded sharply that he would prefer that, if Japan decided to take a similar approach with China, it do so on its own initiative and not at the urging of the United States. Matsumoto reinforced the point by stressing that Japan is not inactive but is endeavoring to achieve positive results on IPR in China in its own way. Otabe further added that Japan had IPR problems not just with China but with other countries as well and was looking at ways to create an entirely new global architecture for IPR protection. Stratford responded that the U.S. government was focused on China because that was the source of most counterfeit products seized in the United States.

Search for Common Interests by U.S. and Japan

¶11. (SBU) Cooperation among U.S., Japanese, and possibly European business groups in China might be a way to create a common position on how to deal with the Chinese, Otabe suggested. Both he and Matsumoto expressed admiration for the willingness of the American Chamber of Commerce in China to put forward its concerns and recommendations to the Chinese authorities. Matsumoto observed that Japanese companies in China tended to be unenthusiastic about joining their own Chamber of Commerce because they saw it as achieving little in the way of tangible benefits in comparison to the costs involved in supporting the organization. He added that being a member of the Japanese Chamber could also make companies more vulnerable to sanctions in the event should the Chinese authorities focus again on the historical issues related to Japan's actions in World War II. Stratford

indicated he would be interested in Seeing Amcham China exchange views with members of the Japanese business community in China.

¶12. (SBU) Recounting his most recent assignment as director-general of the Foreign Ministry's Africa Bureau, Otabe also noted that Japan was concerned about China's foreign assistance and export credit policies. Although China is not a member of the OECD and, therefore, not bound by the guidelines of the organization's Development Assistance Committee, there is a possibility that Chinese export credit regime could violate the WTO Subsidies Agreement, Otabe said. The Japanese were currently studying this issue.

¶13. (C) Picking up on Otabe's remarks, Stratford suggested that the Japanese government look for China-related issues of concern both to government and to industry where there might be WTO implications. This could form the basis of joint litigation with the United States in Geneva. When Otabe suggested using WTO mechanisms, such as the specialized committees, rather than the dispute settlement system to address these issues, Stratford explained that the institutions already in place such as the transitional review mechanism and the trade policy review had not proven particularly effective in moving the Chinese to address our concerns. The Chinese simply avoid answering the questions put to them and do not seem particularly sensitive to "peer pressure" applied by other WTO members. Dispute settlement, on the other hand, could compel Chinese action, Stratford noted.

TOKYO 00001181 004 OF 004

¶14. (C) Otabe replied that big countries like China and the United States itself were not particularly vulnerable to peer pressure either in the WTO or in other international organizations. Japan, while also a large country, is, however, much more sensitive in this regard, he affirmed. Nevertheless, Japan is also an ally of the United States and together needed to find a way to press China to abide by international standards, Otabe observed. He posited that, in dealing with China -- whose legal and other regulatory institutions remained relatively undeveloped -- a medium to long-term approach was needed, something that USTR, which had to respond to short-term demands from Congress and industry, might find difficult to adopt. Japan's goal, he indicated, was to promote reforms in China that would allow a "level playing field" for foreign companies. Stratford explained that USTR was clear on the structural reasons behind the U.S. trade deficit with China but emphasized that it was vital to be tough on those issues where real violations of China's WTO commitments were evident in order to be credible with the Chinese regarding U.S. resolve to hold China to those commitments.

¶15. (C) Otabe affirmed that the United States and Japan needed to approach China-related issues as allies, despite their differences in approach. He raised the possibility of official discussions on China and other third country economic issues like those underway on bilateral topics. He also reiterated that a dialogue between U.S. and Japanese businesses might help to develop a base of support for the Japanese government to take action in the WTO on problems vis-a-vis China. Stratford observed that USTR and other USG agencies are increasingly dissatisfied with Japan's approach, and that the United States would look very closely at what Japan said as a third party in the subsidies case against China in the WTO.

Comment

-----

¶16. (C) Otabe and Matsumoto appeared to get the message that U.S. patience with Japan's reluctance to join the United States in WTO litigation against China is wearing thin. Nevertheless, they brought little to the discussion apart from reiterating longstanding and well-known fears of Chinese retaliation against Japanese business interests in China. With the improvement in the political atmosphere with China seen as one of Prime Minister Abe's few substantial achievements during his time in office, there is little enthusiasm in the Foreign Ministry to join in a U.S.-led effort to compel China's adherence to its WTO commitments through the dispute resolution mechanism. The political price of a souring of Sino-Japanese relations is simply too high, particularly with sensitive Upper House elections looming in July. That said, a low-key process to identify issues of strong common interest to Japan and the United States where Japan might take the lead -- although relatively slow and labor-intensive -- could reap useful benefits. However small or limited the case, once the Japanese gain confidence that they can turn to the WTO in dealing with China without cataclysmic political repercussions, the chances of their joining with the United States in cases more tied to U.S. interests will rise substantially.

¶17. (U) AUSTR Stratford has cleared this message.  
SCHIEFFER